


BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2003-112-C - ORDER NO. 2003-503

AUGUST 14, 2003

IN RE: Joint Petition of C III Communications, LLC,	)	ORDER GRANTING
CIII Communications Operations, LLC,	)	TRANSFER OF
Broadwing Communications Services, Inc.,	)	CERTIFICATE OF
and Broadwing Telecommunications, Inc. for	)	PUBLIC CONVENIENCE
the Transfer of Certificate of Public	)	AND NECESSITY,
Convenience and Necessity and Related	)	CUSTOMERS, AND
Assets and Customers.	)	RELATED ASSETS



This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Joint Petition of CIII Communications, LLC (C III), C III Communications Operations, LLC (C III Ops), Broadwing Communications Services, Inc. (Broadwing-CSI), and Broadwing Telecommunications, Inc. (Broadwing-TI) (collectively, the Petitioners) for approval to transfer to CIII Ops the Certificate of Public Convenience and Necessity (CPCN) to provide facilities-based interexchange services currently held by Broadwing-CSI. Furthermore, and to the extent necessary, the Petitioners request Commission approval of the transfer to C III Ops of the broadband business of Broadwing-CSI, including the assets and customers of Broadwing-TI.

The Commission's Executive Director instructed the Petitioners to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of the Joint Petition and of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Petitioners complied with this instruction and

provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or protests regarding the Joint Petition were received by the Commission.

A hearing was convened on July 16, 2003, at 2:30 p.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Randy Mitchell, Vice Chairman, presided. C III Ops was represented by D. Larry Kristinik, Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Warren Mondschein, Vice President and Deputy Counsel and Assistant Secretary of Corvis Corporation and Assistant Secretary to C III Communications, LLC and C III Communications Operations, LLC, appeared and testified in support of the application. Mr. Mondschein was hired in April 2000 by Corvis. He was recently appointed Assistant Secretary of CIII and C III Ops.

The purpose of Mr. Mondschein's testimony was to present evidence in support of the Joint Petition establishing that C III Ops has the financial, technical, and managerial ability to provide telecommunications services in South Carolina. Mr. Mondschein described the services that C III Ops hopes to provide in South Carolina following its acquisition of subject assets. The Petitioners seek Commission approval of the transfer of the Certificate of Public Convenience and Necessity to C III Ops to provide both resold and facilities-based interexchange services currently held by Broadwing-CSI. The Petitioners also request Commission approval of the transfer to C III Ops of the broadband business of Broadwing-CSI, including the assets and customers of Broadwing-TI.

On February 22, 2003, Broadwing-CSI agreed to sell to C III its entire broadband business, which includes interstate and intrastate long distance and private line services. As a result of this agreement, substantially all of the assets of Broadwing-CSI, including all of the assets and customers of its wholly-owned subsidiary, Broadwing-TI, shall be transferred to C III Ops, a wholly-owned subsidiary of C III. C III Ops would continue to provide service to all of Broadwing-CSI's and Broadwing-TI's existing customers under the trade name "Broadwing". In addition, C III Ops would retain all of Broadwing-CSI's current employees. The authority for which C III Ops has applied is necessary to assume the business of Broadwing-CSI and Broadwing-TI. In addition, the authority for which C III Ops has applied is equal to the authority that Broadwing-CSI currently holds.

C III Ops is wholly-owned by C III. In turn, C III is currently 99% owned by Corvis and 1% owned by Cequel III, LLC (Cequel III). As part of the proposed transaction, the ownership percentages will change slightly with Corvis owning approximately 90% of C III and Cequel III owning approximately 8% of C III. Corvis will, however, retain 99% of its voting interests of C III. In addition, Broadwing, Inc., the current parent of Broadwing-CSI and Broadwing-TI will receive a 2.019%, non-voting interest in C III.

Corvis, a Delaware publicly-traded corporation, is the majority and controlling owner of C III. Corvis is a world leader in the provision of optical network solutions. From point-to-point links to all-optical networks to transoceanic systems, Corvis delivers innovative optical network solutions that drive carrier profitability faster than any other vendor. According to the record, headquartered in Columbia, Maryland, Corvis provides

carriers with scalable optical networking solutions and services that dramatically reduce the overall expenses associated with building and operating networks. The testimony reveals that carriers deploying Corvis' optical network solutions can provide new wavelength-based services and tailor dynamic service-level agreements for rapid revenue generation.

Mr. Mondschein testified that Cequel III is a privately-held Delaware limited liability company that is a minority owner of C III. Cequel III's mission is to acquire or invest in, and subsequently manage, growth-oriented firms in the telecommunications and cable industries, focusing on those companies that offer platforms for future acquisitions and industry consolidation.

The record reveals that the officers of C III Ops are the same as the officers and directors of CIII. As a single member limited liability company, C III Ops does not have directors. The officers and directors of C III Ops are not the same as Corvis, although some Corvis officers and directors will be officers and directors of C III. The record also indicates that C III is taking most of the employees of Broadwing as part of this transaction, including executive level employees, managers, engineers, customer service and sales and marketing employees. In addition, C III Ops will be managed by an executive committee of five members, two appointed by Corvis, two by Cequel III, the other current investor in C III, and one which will be agreed to by the parties.

Regarding C III Ops' technical experience to offer the subject services, Mr. Mondschein testified that C III Ops has the experience. C III Ops is taking the existing employee base from Broadwing, including a significant number of their key personnel,

and C III Ops expects the transition to be seamless and totally transparent to customers and to the organization. Broadwing's chief technology officer as well as the network engineers and field technicians will be joining C III Ops. Additionally, the record reveals that the network that is being transferred to C III Ops is primarily designed around Corvis' equipment, which means that the technical expertise of Corvis is available to C III Ops.

Mr. Mondschein also testified regarding C III Ops financial resources to provide telecommunications services in South Carolina. In the Joint Petition, Corvis' most recent 10Q was provided and thereafter Corvis has issued its 10K. According to the testimony, Corvis' financial condition has not changed materially since its 10Q was filed, other than the money spent to fund continuing operations in the most recent quarter. The purchase of the Broadwing assets by C III and C III Ops will be funded by Corvis with the purchase price and the working capital before closing.

The testimony indicates that C III Ops has sufficient financial resources to operate the business. The business that C III Ops is acquiring is operating near breakeven. Additionally, Corvis has committed to investing \$50 million, in addition to the \$108 million purchase price, in working capital. The record reveals that Corvis and Cequel III plan to invest substantial capital to allow C III and C III Ops to purchase the assets of Broadwing-CSI and Broadwing-TI. Corvis has committed to making a working capital infusion of up to \$50 million, as needed, but in any event not later than December 31, 2003. This money would provide C III Ops with additional financial resources in case of any unforeseen operating deficits or to further expand services. Mr. Mondschein testified

that this working capital infusion is expected to provide C III Ops with adequate reserves until its operations are cash flow positive.

The testimony also reveals that C III Ops has the facilities to respond to customer inquiries and complaints. C III Ops is purchasing all the facilities of Broadwing, which includes the facilities to respond to customer inquiries and complaints. Customers will continue to receive the best possible service and continue to contact their service provider in the same way that they have always done. All regulatory contacts for the Commission Staff will remain the same, according to the testimony.

C III Ops will do its own billing. According to the testimony, C III Ops is purchasing several billing programs from Broadwing so that it can continue to bill in the same manner that Broadwing does. According to Mr. Mondschein, as part of the agreement between C III Ops and Broadwing, C III Ops is purchasing the trade name of “Broadwing” and is going to provide service under that name. Therefore, C III Ops does not anticipate issuing any bills in the name of C III Ops. Upon the closing of the transaction, C III Ops will change its legal name to Broadwing Communications, LLC. According to Mr. Mondschein, customer bills will be issued in the same format in which they were issued before: the Broadwing logo will still appear on all bills. Mr. Mondschein testified that C III Ops believes that maintaining the Broadwing name on the invoices is important to avoid customer confusion.

The testimony also addresses whether the proposed transaction will have an adverse impact on current Broadwing customers. According to Mr. Mondschein, the transaction will be virtually seamless and transparent to the customers. There will be no

change in the name of the providing carrier, no substantial change in the bill format, no change in terms or conditions of the service offering, and no reprogramming of LEC networks with new PICs. Additionally, the proposed transaction will result in C III Ops having financial, managerial, and technical qualification better than those of Broadwing. Mr. Mondschein testified that the transaction will allow C III Ops to better serve the Broadwing customers.

To guard against slamming, C III Ops will adopt the current procedures used by Broadwing. According to the testimony, C III Ops is acquiring virtually all of Broadwing. The record reveals that all of Broadwing's current procedures, including anti-slamming procedures, will be used by C III Ops. Specifically, C III Ops will have internal procedures, including the use of Letters of Authorization (LOAs) and third party verifications. Additionally, as a result of this transfer, C III Ops will acquire Broadwing's current carrier identification codes. Therefore, there will not be any change in the customers' Preferred Interexchange Carrier or PIC codes.

After full consideration of the applicable law, the Joint Petition, and the evidence presented at the hearing, the Commission hereby issues its Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. The Commission should approve the transfer of the Certificate of Public Convenience and Necessity to provide both resold and facilities-based interexchange services currently held by Broadwing-CSI to C III Ops.

2. The Commission should approve the Joint Petition's request to transfer to C III Ops the broadband business of Broadwing-CSI, including the assets and customers of Broadwing-TI.

3. C III Ops will use the existing employee base from Broadwing, including a significant number of their key personnel.

4. The transfers will be virtually seamless and transparent to the customers. There will be no change in the name of the providing carrier, no substantial change in the bill format, no change in terms or conditions of the service offering, and no reprogramming of LEC networks with new PICs.

5. The Commission finds that the transfer to C III Ops the Certificate of Public Convenience and Necessity of Broadwing-CSI is in the public interest as C III Ops will be better positioned to provide and expand service offerings to their South Carolina customers. The proposed transaction will allow C III Ops to have managerial, financial, and technical qualifications better than those of Broadwing.

#### **CONCLUSIONS OF LAW**

1. Based on the above Findings of Fact, the Commission determines that the Joint Petition for the transfer of the Certificate of Public Convenience and Necessity and Related Assets and Customers will not adversely affect the public interest nor will the conversion adversely affect the provision of telecommunications services in South Carolina, and therefore, the Commission approves the requested asset transfer.

2. The Commission concludes that the Certificate of Public Convenience and Necessity held by Broadwing-CSI hereby is, transferred to C III Ops to provide



intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

3. The Commission approves the Petitioners' request to transfer to C III Ops the broadband business of Broadwing-CSI, including the assets and customers of Broadwing-TI.

4. With regard to any residential interexchange service offerings of C III Ops, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. With regard to interexchange service rates, C III Ops shall not adjust its interexchange service rates below the approved maximum levels without notice to the Commission and to the public. C III Ops shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum

rate level for interexchange services reflected in the tariff which would be applicable to the general body of C III Ops's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

6. If it has not already done so by the date of issuance of this Order, C III Ops shall file its revised interexchange tariffs and accompanying price lists within thirty (30) days of receipt of this Order. The revised tariffs shall be consistent with the findings of this Order, shall incorporate the changes suggested by the Staff and with which C III Ops agreed, and shall be consistent with South Carolina law, including the Commission's Rules and Regulations.

7. C III Ops is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to C III Ops' interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. C III Ops shall resell the services of only those interexchange carriers or LECs authorized by this Commission to provide telecommunications services within the State of South Carolina. If C III Ops changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, C III Ops shall comply with the terms of Order No. 93-462, Order

Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, C III Ops shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

11. C III Ops shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, C III Ops shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form to be used in filing annual financial information with the Commission may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). The two-page form C III Ops is required to use in which to file the required information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS." Be advised that the Commission's annual report form requires the filing of intrastate revenues and intrastate expenses.

12. C III Ops shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, C III Ops shall provide to the Commission in writing the names of

the authorized representatives to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

C III Ops shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form C III Ops is required to use by which to file the authorized utility representative information may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). This form is entitled "Authorized Utility Representative Information." Further, C III Ops shall promptly notify the Commission in writing if any representatives are replaced.

C III Ops shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2002).

13. C III Ops shall conduct its business in compliance with Commission decisions and Orders, both past and future.

14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff with information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup>.

15. C III Ops is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. The Petitioners shall notify the Commission when the transaction is closed and C III Ops shall submit to the Commission a request for a name change of the Certificate of Public Convenience and Necessity after the transaction is complete.

17. This Order shall remain in full force and effect until further Order of the Commission.

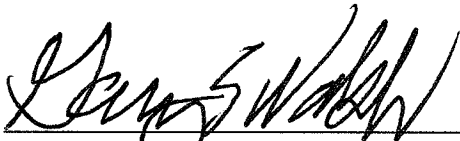
BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Gary E. Walsh, Executive Director

(SEAL)